APPENDIX A

State Seal
THE STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
124 HALSY STREET
PO BOX 45029
NEWARK NEW JERSEY 07101
FAX NO. (973) 648-3879

CHRISTINE TODD WHITMAN
Governor

John J. Farmer, Jr.
Attorney General

TEL. (973) 648-3879

June 23, 1999

Mr. William K. Suter
Clerk of the Court
Supreme Court of the United States
U.S. Supreme Court Building
1 First Street
Washington, D.C. 20543

Re: I/M/O of the Application of Diane Sank to Contest the Election of Ilan Plawker to the Office of Councilperson of the Borough of Englewood Cliffs
Docket No. 98-1995

Dear Mr. Suter:

Respondents, the Bergen County Superintendent of Elections and the Bergen County Board of Elections, waive their right to file a brief in opposition to the petition for a writ of certiorari in the above entitle matter. We wish, however, to

offer the following limited comments to underscore the absence of the requisite grounds for granting certiorari.

Most critically, respondents must emphasize that the validity of the 1995 election for council in Englewood Cliffs at issue herein is now moot. On January 1, 1999, Ilan Plawker competed the term of office that is contested in this matter. In contrast to Morse v. Republican Party of Virgo, 517 U.S. 186, 235 fn. 48 (1996), which involved ongoing Republican party policies, the issues raised in this petition are factually limited to the 1995 election, are unlikely to recur and no remedy is available for the alleged improprieties in the election process. Because the petition presents no question of general public importance and it is unlikely that the identical factual issues will arise in the future, review by the Court at this juncture is not warranted, Lewis v. Continental Bank Corp., 494 U.S. 472 (1990).

Additionally, the factual issues raised by the petitioner -- that there were more voting authorities issued than voters registered, that the handwriting experts testimony was excluded and that the ballots of voters maintaing [sic] more than one residence were counted -- were decided by the state courts on the basis of independent state laws and therefore this case does not qualify for Supreme Court review. Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977). Similiarly, [sic] petitioner's challenge of Mrs. Messinger's alleged second vote was properly denied review by the state appellate court on state law grounds because it was not presented to the trial court and did not concern the jurisdiction of the trial court or concern a matter of great public interest.

In sum, the Appellate Division decision in this case is a well-reasoned application of settled principles of state law applied to the specific facts of the case and does not present a conflict among judicial decisions conflict among judicial

decisions that requires review by the Supreme Court. Moreover, since the term of the council seat sought by petitioner has expired, review by this Court is not warranted. It is respectfully submitted that the petition for certification should be denied.

Respectfully submitted

JOHN J. FARMER, JR.
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Respondents
Bergen County Superintendent
of Elections and the Bergen County
Board of Elections

By: /s/ Andrea M. Silkowitz
Andrea M. Silkowitz
Assistant Attorney General

cc: Diane Sank
John L. Molinelli, Esq.

APPENDIX B

November 15, 1984

The Record Newspaper

Section B3

VOTE TIED IN RACE FOR CLIFFS COUNCIL SEAT

ENGLEWOOD CLIFFS-- The official count of absentee ballots has turned a close borough council race into a dead heat, election officials announced yesterday.

Absentee ballots were tallied incorrectly after the November 6 election said county Election Commissioner Chairman Nick Castronuovo.

In the official count, Democratic incumbent Lee Langbaum closed in on Republican challenger Diane Sank. Castronuovo said each woman received 1,529 votes in tallying completed Friday. Prior to that, their unofficial totals were Sank, 1,538, and Langbaum, 1,513.

The chairman said the two candidates have the option to ask for a recount, but neither had done so. He said the deadline for requesting the recount is Nov. 25.

Langbaum said yesterday she was still undecided what course she would take, and Sank had no comment. Langbaum, however, said she felt as if she had been given a reprieve.

"It was a tremendous disappointment, because I love serving this town." she said. "But now I feel as if I've been given a second chance."

If no recount is requested, a special election will be held within 50 days to fill the seat, said Deputy County Clerk Joan Lesemann.

Lesemann said last night that she had not yet been able to get a definitive answer because the circumstances were unusual, but she believes a special election would be paid for by the county. She is not sure of the cost of such an election.

Castronuovo said over 23,000 absentee ballots countywide were cast this Election Day, the highest in at least five years.

APPENDIX C

November 15, 1984

The Record Newspaper

Section B3

GOP CANDIDATE WINS BY 1 VOTE

By Kathleen Lynn
Staff Writer

LEONIA -- Republican Stefan Bucek, who apparently was unsuccessful in his bid for a one-year borough council term, actually had won by a single vote, according to the official tally announced yesterday by the Bergen County clerk's office.

But because the election was so close, Democrats and Republicans have asked the Bergen County Board of Elections to recount the votes cast Nov. 6.

The county clerk's election division reported that winners of three-year seats were Democratic incumbent Marion Freidson, with 2,118 votes, and Republican Evelyn "Lynne" Berenbroick with 2,080. Democratic incumbent Bert Kohl received 2,079 votes, and Republican Mary Kollar, 2045.

Winners of the race for two one-year terms were Democrat Concezio "Connie" Petrella, with 2,105 votes, and Republican Bucek, 2,064. Incumbent Democrat Manos Lampidis received 2,063 votes and Republicans Stanley Astanian, 2,541.

The board of elections has scheduled a recount for Tuesday.

Berenbroick said that Democrats and Republicans had agreed to split the election board's recount fee, expected to total $225.

Democrats now hold all six council seats and the mayor's post. If the recount confirms the county clerk's tally, two Republicans–Berenbroick and Bucek--will take seats in January.

APPENDIX D

November 22, 1989

The Record Newspaper

Section B3

ELECTION RESULTS STAND AFTER RECOUNTS

By Mary Jo Layton and Corky Slemaszko
Record Staff Writer

Election recounts in nine towns in Bergen and Morris counties confirmed the Nov. 7 results and put to rest legal challenges from losing candidates.

In Bergen County, the election results remained the same in Bogota, Paramus, Wood-Ridge, Northvale, and Ramsey after recounts Tuesday afternoon, officials said.

In Englewood Cliffs, Republican Committeewoman Arlene Wiczyk picked up three absentee ballots and narrowed her loss to Democrat Roberta Stern to one vote, said Eileen Feldner, chairwoman of the Board of Elections.

Neither Wiczyk nor Stern could be reached for comment Tuesday.

Three recounts in Morris County offered no hope for challengers in Morristown, Chatham Township and especially in Montville—where one vote swayed the race.

Committeeman David Marshall, who challenged fellow Republican Mayor Fred Eckhardt after falling one vote short in a bid for the second open committee seat, lost again by one vote.

"I'm disappointed," Marshall said Tuesday. "But I'm relieved that it's over. I don't know if I'll run again. We'll cross that bridge when we come to it."

Lillian Harberson, assistant to the superintendent of elections in Morris County, said no challenges had been made on the recounts and all of them were finished by noon Tuesday.

In Passaic County, Democratic freeholder candidate Cyril Yannarelli, who lost by some 1,800 votes, will have until Nov 28 for a recount, according to Bianca Hancock, Secretary to the Board of Elections.

APPENDIX E

June 7, 1997

The Record Newspaper

Section B1

CLIFFS' GOP WILL BREAK TIE IN PRIMARY PROCESS FAVORS PARTY INSIDER

By DOUG MOST
Staff Writer

ENGLEWOOD CLIFFS— A tie in Tuesday's Republican primary between Diane Sank and Councilman Ramon Ferro has left the decision of who advances to the November election in the hands of the borough GOP Committee.

Who heads the nine-person committee? Ferro's close friend and supporter, Angelo Mungioli. Who did the committee endorse in the election? Ferro and his running mate, Councilman James Bancroft, who won in the primary.

Ferro and Bancroft also are members of the committee, but Mungioli said they have been disqualified from voting.

"It just didn't seem fair to have them vote," Mungioli said.

Mungioli has called for the committee to meet Sunday to vote. Either Sank or Ferro will then join Bancroft in the race against Democrats Jerry Kasoff and Joseph Cioffi for two, three-year terms. The vote could be delayed or called off if Sank or Ferro asks for a recount, and it changes the result.

A number of borough officials said that, right or wrong, the tie-breaking process seems to favor incumbents. State statute says deadlocks in primaries are broken by party committees, unlike ties in general elections, which are broken by runoffs.

"It's not a proper way," Sank said Wednesday after learning of the state statute. "The people voted. If its a tie, the people should be given an opportunity to have their voice heard again. It shouldn't be decided by a partisan committee.

"When you have an election that's a tie, in a regular election you have a runoff," Sank said. "The same should apply here."

Sank said she had not decided whether to seek a recount.

Asked whether the process clearly favors Ferro, Mungioli said, "In a small town like this, I don't think it favors anyone. Both have a good shot."

"I guess we'll see what happens," Ferro said. "It is strange, that's for sure."

Bancroft drew 153 votes Tuesday, Ferro and Sank got 150 apiece, and Sank's runningmate, Peter Chen, collected 130.

APPENDIX F

March 2, 1999

The Record Newspaper

Section L3

MUM'S THE WORD ON ALPINE VOTE FLAP

WITNESSES SCARCE FOR MAYORALTY TRIAL

By RICHARD COWEN
Staff Writer

Allegations of voter fraud in the November mayoral election may be the talk of the town in Alpine these days, but that doesn't mean folks are willing to talk about it in a court of law.

Lawrence Manus' bid to regain the mayoral seat he lost by one vote five months ago to Paul H. Tomasko has hit a snag. Manus' legal team has been having trouble serving subpoenas on voters who are witnesses in the case—many of whom Manus contends cast absentee ballots.

It's a problem that has plagued Tomasko, who also is challenging some of the absentee ballots cast for Manus.

The problem with getting witnesses to come forward forced Superior Court Judge Peter T. Murphy to postpone the trial on Monday for the third time—but not before he warned both sides he was beginning to lose his patience.

"Your case is not the only case I have," Murphy said. "I've got a lot of other things to do than to sit down and wade through the discovery process."

Murphy scheduled another hearing for Thursday, when he will set a new trial date, expected to be in April.

At issue are about 50 absentee ballots cast in the election, which Tomasko won 349 - 348. Of those absentee ballots, about 20 are being challenged by either side on the grounds that they contain forged signatures, or were cast by voters who were not Alpine residents.

Manus' attorney, John Schepisi, said he as been trying to serve subpoenas on several voters living outside Alpine—some of them as far away as Washington, D.C. Tomasko said that it is not unusual for Alpine residents to maintain several addresses.

But because subpoenas have to be served in person to be legally binding, getting the trial preliminaries completed has proved to be a problem.

Schepisi said Alpine residents don't want to get involved and haven't been answering the door when his legal team tries to subpoena them. In one instance, Schepisi dispatched his secretary to deliver a bouquet of flowers to an Alpine resident. When the resident opened her door, she found a subpoena tucked inside.

"They're hiding," Schepisi said. Manus could not be reached for comment on Monday. Schepisi however, predicted victory.

"When all the evidence is in, I believe the judge will set aside the election result," he said.

The Borough of 1,900 residents is one of the wealthiest towns in America, with median family income of more than $150,000, according to the 1990 census—more that three times higher than Bergen County.

Tomasko said he has spent $10,000 of his own money defending himself.

The two men are fighting for a job that is part-time and pays nothing.

Tomasko, who took office as mayor in January, disagrees, but he has been taking heat form residents that he has had to subpoena.

"It's unfortunate, but by virtue of one man's desire to hang on to political office, we have to become part of this disgusting game," Tomasko said.